



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB1933

Introduced 2/20/2009, by Sen. A. J. Wilhelmi

SYNOPSIS AS INTRODUCED:

New Act

Creates the Homeowners' Association Bill of Rights Act. Provides that the Act applies to common-interest communities of single-family detached homes to protect homeowners with respect to actions by their association. Defines terms. Provides for homeowner rights: to protection against foreclosure by an association except under limited circumstances; to resolve disputes with an association without litigation through a fact-finding hearing, mediation, a time to cure a violation, and other provisions; to fairness in litigation by providing for a homeowner's attorney fees and limits on an association's attorney fees; to receive information about all association rules and charges, including disclosure before a home purchase is binding; to stability in an association's rules and charges, and limits on changes to the rules and charges; to individual autonomy concerning the display of flags and signs, peaceful assembly, use of common property, and limits on association documents; to oversight of associations and directors, including open records, open meetings, open voting, elections, and recalls; to vote on association matters and seek association office; and to reasonable discharge of responsibilities by associations and directors.

LRB096 11028 AJO 21321 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Homeowners' Association Bill of Rights Act.

6 Section 5. Application. This Act applies to
7 common-interest communities of 200 or more single-family
8 homes. The provisions protect homeowners with respect to
9 actions by their association or its directors, officers,
10 employees, managers, and other agents, but are not intended to
11 alter the rights of homeowners or associations with respect to
12 lenders, real estate agents, or developers.

13 Section 10. Definitions. In this Act:

14 "Common-interest community" means a real estate
15 development or neighborhood in which individually owned lots or
16 units are burdened by a servitude that imposes an obligation
17 that cannot be avoided by non-use or withdrawal:

18 (i) to pay for the use of, or contribute to the
19 maintenance of, property held or enjoyed in common by the
20 individual owners; or

21 (ii) to pay dues or assessments to an association that
22 provides services or facilities to the common property or

1 to the individually owned property, or that enforces other
2 servitudes burdening the property in the development or
3 neighborhood.

4 "Homeowner" means the owner of property within a
5 common-interest community.

6 "Association" means an organization, including homeowners
7 as members, created to manage the property or affairs of a
8 common-interest community.

9 "Common property" means property rights of an identical or
10 a similar kind held by the homeowners as appurtenances to their
11 individually owned lots or units.

12 "Declaration" means the recorded document or documents
13 containing the servitudes that create and govern the
14 common-interest community.

15 "Governing documents" means the declaration and other
16 documents, such as the articles of incorporation or articles of
17 association, bylaws, architectural guidelines, and rules and
18 regulations that determine rights or obligations of homeowners
19 or that otherwise govern the management or operation of an
20 association.

21 Section 20. The Right to Resolve Disputes Without
22 Litigation.

23 (1) Required Notice of Violation. Before an association may
24 seek foreclosure, file suit, charge any fee (including attorney
25 fees), limit common area use, or take other action against a

1 homeowner for violation of governing documents, except for an
2 emergency action as provided in subsection (8), the association
3 must, in addition to compliance with other law and governing
4 documents, do the following:

5 (a) Provide notice to the homeowner twice, at least 21
6 days apart, that (i) describes the basis for the claim,
7 including how the homeowner allegedly violated quoted
8 terms of the governing documents; (ii) states any amount
9 the association claims is due, describes how the homeowner
10 can remedy the violation, confirms the right to comply
11 without waiving the right to dispute the violation, and
12 gives notice of the right to request an installment plan
13 for assessments; and (iii) states that the homeowner has a
14 reasonable period to cure of at least 21 days after the
15 second notice, unless the homeowner had an opportunity to
16 cure a similar violation within the past 6 months, and that
17 during the cure period the homeowner can obtain a hearing
18 as provided in subsection (2) or mediation as provided in
19 subsection (3), without incurring any attorney fees
20 charged by the association.

21 (b) If the certified mail notice is not delivered,
22 reasonably try to confirm the homeowner's current address
23 and either re-send the notice as in subdivision (1)(a) or,
24 if no other address can be found, reasonably try to
25 hand-deliver the notice, the period to cure starting anew
26 from this notice.

1 (2) Right to a Hearing. After notice of subdivision (1)(a),
2 a homeowner has the right at no cost to a hearing to verify
3 facts and seek resolution with the directors or a committee
4 designated by the directors. If the directors use a committee,
5 any agreement must be enforceable, to be ratified by the
6 directors unless it conflicts with law or the governing
7 documents, and the homeowner must be allowed to appeal to the
8 directors. In addition:

9 (a) The association shall hold the hearing within 30
10 days after the association receives the homeowner's
11 request and shall provide notice of the date, time, and
12 place at least 10 days before the hearing; the homeowner
13 may request postponement, which shall be granted if for not
14 longer than 10 days; additional postponements may be
15 granted by written agreement of the parties; the homeowner
16 may record the meeting; and the committee (and, on any
17 appeal, the directors) shall issue a written decision
18 including the notice required by subsection (4); and

19 (b) The association shall extend the period to cure
20 under subdivision (1)(a)(iv) until 15 days after notice of
21 the written decision by the committee or directors,
22 whichever is later.

23 (3) Right to Confidential Mediation. After notice given
24 under subdivision (1)(a), except with respect to disputes
25 involving only an assessment or small monetary charge, less
26 than \$1,000, a homeowner shall have the right to one-half day

1 of neutral mediation, with the proceedings to be kept
2 confidential and not admissible in court except as provided by
3 State law. The requesting homeowner shall pay 50% of the
4 mediator's charge and the association shall pay the balance.
5 If, after 30 days, the parties cannot agree on a mediator, the
6 homeowner shall have the right to file an action against the
7 association. If the parties agree on a mediator, the
8 association shall extend the period to cure under subdivision
9 (1) (a) (iv) until 15 days after the mediation.

10 (4) Right to Options. After receiving notice of a decision
11 under subsection (2), a homeowner shall have the right, within
12 15 days, to invoke the procedure of subsection (3). The notice
13 of decision under subdivision (2) (b) shall specify this right.

14 (5) Right to Extend Time to Cure. During the period to cure
15 as provided in subsection (1), as extended in subsection (2) or
16 (3), the association shall not incur attorney fees chargeable
17 to the homeowner, and shall not take any enforcement action
18 except for emergency action allowed by subsection (8).

19 (6) No Lawsuit Without Directors Voting. No association may
20 sue a homeowner without an authorizing vote by a majority of
21 all directors, in compliance with applicable law and governing
22 documents that may set super-majority vote or other
23 requirements.

24 (7) Notice before Litigation. Except for emergency action
25 allowed by subsection (8), the association must provide
26 distinct notice at least 15 days before filing suit against a

1 homeowner, that:

2 (a) describes the basis for the suit, including how the
3 homeowner allegedly violated specified terms of the
4 governing documents; and

5 (b) states any amount the association claims due,
6 describes how the homeowner can cure the violation, and
7 gives notice of the right to request an installment plan
8 for assessments.

9 (8) Exception for Emergencies. Nothing precludes an
10 association from seeking a temporary injunction, or taking
11 temporary enforcement action, in a good faith response to an
12 emergency. An emergency is a situation that could not have been
13 reasonably foreseen, poses a significant and immediate threat
14 to the common-interest community. Any temporary enforcement
15 action entitles the homeowner to immediate notice and the
16 related rights, provided enforcement action may remain in place
17 pending (a) the final determination of homeowner rights or (b)
18 the end of the conditions resulting in the immediate and
19 significant threat, whichever comes sooner.

20 (9) No Additional Charges, but Additional Options Allowed.
21 No association may charge homeowners for exercise of their
22 rights under this Act, but an association may offer additional
23 options for alternative dispute resolution (ADR); however, no
24 association may require binding ADR, otherwise require a
25 homeowner to waive the right to go to court, or bill a
26 homeowner for mandatory ADR. In any litigation, if a party

1 moves to compel nonbinding ADR, the court may consider the
2 extent to which the parties already have pursued ADR.

3 (10) Annual Notice of Rights to Alternative Dispute
4 Resolution. Once each year, each association shall alert
5 homeowners of their rights to ADR, including statutory rights
6 and any others available under subsection (9).

7 Section 25. The Right to Fairness in Litigation.

8 (1) Judicial Protection. Individual homeowners may sue an
9 association to enforce statutory rights as well as their rights
10 under this Act or governing documents, without being required
11 to sue other homeowners; further, the association shall pay for
12 any notice to homeowners that the court finds to be
13 appropriate. Governing documents shall not limit judicial
14 review or court enforcement; however, they may require ADR to
15 the extent permitted by Section 20.

16 (2) Compliance Under Protest. Homeowner compliance with an
17 association's demand for action, or demand to cease action,
18 including but not limited to any demand to pay assessments or
19 attorney fees, does not waive homeowner rights to challenge
20 such demand.

21 (3) Protected Homeowner Rights to Attorney Fees. In any
22 case brought by an association or homeowner to enforce
23 governing documents or applicable law, the homeowner shall be
24 awarded reasonable attorney fees and costs to the extent that
25 the homeowner prevails. Attorney fees shall reflect counsel's

1 reasonable hourly rate and time worked, and shall not be
2 limited by the amount the homeowner actually paid, if any.

3 (4) Limited Association Rights to Attorney Fees. In any
4 case brought by an association or homeowner to enforce
5 governing documents or applicable law, if authorized by the
6 declaration, the association shall be awarded reasonable
7 attorney fees and costs to the extent that the association
8 prevails; however, the reasonable attorney fees may be reduced
9 at the discretion of the court based on a finding that the
10 judicial review benefited the association or homeowners by
11 clarifying governing documents or applicable law, or other
12 equitable considerations. Attorney fees shall reflect
13 counsel's reasonable hourly rate and time worked, limited by
14 the amount the association actually paid.

15 Section 30. The Right to Be Told of All Rules and Charges.

16 (1) Governing Documents. An association may not enforce
17 charges or other rules against homeowners, except those set
18 forth in plain English in governing documents. All operating
19 rules shall be compiled in a single document, available to
20 homeowners on request.

21 (2) Disclosure to Buyers. Unless otherwise provided by
22 statute, the following provisions apply:

23 (a) At least 3 days before an offer to buy a home
24 becomes binding, the homeowner shall furnish the potential
25 buyer with: (i) all the association's governing documents,

1 excluding plats and plans; (ii) a statement of each
2 existing assessment, any unpaid assessment currently due
3 from the selling homeowner, and any other alleged violation
4 of the association's governing documents by external
5 features of the home or landscape as of the date of the
6 certificate, citing applicable rules; (iii) the
7 association's current operating budget and financial
8 statement, including any legally required summary of the
9 association's reserves; and (iv) a statement of the number
10 of foreclosure lawsuits filed within the past 3 years, any
11 unsatisfied judgments, and pending legal actions against
12 the association or otherwise relating to the
13 common-interest community of which the selling homeowner
14 has actual knowledge.

15 (b) Upon a homeowner's request, within 10 days the
16 association shall furnish a certificate with the
17 information specified in subdivision (2)(a). A requesting
18 homeowner is not liable for erroneous information in the
19 certificate. A buyer is not liable for any past assessment,
20 any future assessment greater than stated in the
21 certificate, unless lawfully increased after the sale, or
22 for violations of governing documents by external features
23 of the home or landscape not stated in the certificate. For
24 this certificate, the association may charge only actual
25 costs, not to exceed \$1 per page.

26 (c) Upon request by a homeowner, potential buyer in

1 receipt of a certificate pursuant to subdivision (2) (b), or
2 homeowner's or buyer's authorized agent, within 7 days the
3 association shall make any legally required study of the
4 association's reserves reasonably available to copy and
5 audit.

6 (3) Limits on Default and Implied Powers. Governing
7 documents, and statutes governing homeowners, shall be
8 construed to favor homeowners' free and unrestricted use of
9 their homes, and against any person seeking to enforce a limit
10 on homeowner rights.

11 (a) Absent specific authorization in the declaration
12 or in subdivision (3) (b) or subdivision (3) (c), an
13 association does not have power to adopt any rules that
14 restrict the use or occupancy of, or behavior within,
15 individually owned homes.

16 (b) Except as limited by statute or the governing
17 documents, an association has implied power to adopt
18 reasonable operating rules to govern the use of (i) common
19 property and (ii) individually owned property to protect
20 the common property.

21 (c) If the declaration grants a general power to adopt
22 rules, an association also has power to adopt reasonable
23 operating rules designed to: (i) protect homeowners from
24 unreasonable interference in the enjoyment of their
25 individual homes and the common property caused by use of
26 other individually owned homes; and (ii) restrict the

1 leasing of homes to meet valid underwriting requirements of
2 institutional lenders.

3 (d) Except to the extent provided by statute or
4 authorized by the declaration, a common-interest community
5 may not impose restrictions on the structures or
6 landscaping that may be placed on individually owned
7 property, or on the design, materials, colors, or plants
8 that may be used.

9 (e) An association may borrow money subject to any
10 limits stated in the governing documents but, unless the
11 declaration or a court-approved order grants specific
12 authority, the association may not assign future revenues
13 or create a security interest in common property without
14 approval by 51% of all homeowners (or more if required by
15 governing documents) in a vote after at least 30 days'
16 notice.

17 Section 35. The Right to Stability in Rules and Charges.

18 (1) Seniority of Documents. In resolving any conflict among
19 governing documents, the senior document controls.

20 (2) Homeowner Powers to Amend Governing Documents. For any
21 governing document, the following apply:

22 (a) Except as limited by the governing document, a
23 senior document, or statute, homeowners have the power to
24 amend subject to the following requirements:

25 (i) Unless the governing document, a senior

1 document, or statute specifies a different number, an
2 amendment adopted by homeowners holding a majority of
3 the voting power is effective to:

4 (a) extend the term of the governing document;

5 (b) make administrative changes reasonably
6 necessary for management or administration of the
7 common property; or

8 (c) prohibit or materially restrict uses of
9 individually owned homes that threaten to harm or
10 unreasonably interfere with reasonable use and
11 enjoyment of other property in the community, or to
12 amend or repeal such prohibition or restriction
13 adopted by amendment under this subdivision
14 (2) (a) (i) (c).

15 (ii) Unless the governing document, a senior
16 document, or statute specifies a different number, an
17 amendment adopted by homeowners holding two-thirds of
18 the voting power is effective for all other lawful
19 purposes except as stated in subdivisions (2) (b) and
20 (2) (c).

21 (b) Amendments that do not apply uniformly to similar
22 homes and amendments that would violate association duties
23 to homeowners under this Act are not effective without
24 approval by homeowners whose interests would be adversely
25 affected, unless the declaration clearly and specifically
26 appraises purchasers that such amendments may be made. This

1 subdivision (2)(b) does not apply to non-uniform
2 modifications made under circumstances that would justify
3 judicial modification.

4 (c) Except as otherwise expressly authorized by the
5 declaration, and except as provided in subdivision (2)(a),
6 unanimous homeowner approval is required to (i) prohibit or
7 materially restrict the use or occupancy of, or behavior
8 within, individually owned lots or units or (ii) change the
9 basis for allocating voting rights or assessments among
10 homeowners.

11 (d) At least 60 days before voting on any proposed
12 amendment to a governing document, the association shall
13 provide notice to all homeowners, including the specific
14 text proposed and a description of the amendment's purpose
15 and anticipated effects. No amendment takes effect before
16 the association provides notice of adoption to all
17 homeowners, certified by an association officer, and to the
18 extent required by law, the association records the
19 amendment.

20 (e) Directors have no power to amend a governing
21 document except where expressly authorized by statute or,
22 where not otherwise contrary to statute, expressly
23 authorized by the governing document or a senior document;
24 provided that, if governing documents authorize directors
25 to impose any duty or charge on homeowners, this shall be
26 done by operating rule unless the governing document

1 requires otherwise; and provided further that homeowners
2 only, not directors, shall have power to amend:

3 (i) any provision that affects number,
4 qualifications, powers and duties, terms of office, or
5 manner and time of election or removal of directors; or

6 (ii) any provision with respect to amendment of any
7 governing document.

8 (3) Limits on Operating Rule Changes by Directors.
9 Directors may adopt, amend, or repeal operating rules only if
10 all of the following requirements are satisfied:

11 (a) All operating rules must be:

12 (i) in writing;

13 (ii) within directors' authority conferred by law
14 or corporate documents;

15 (iii) not inconsistent with law and corporate
16 documents;

17 (iv) adopted, amended, or repealed in good faith
18 and in substantial compliance with this Act; and

19 (v) reasonable.

20 (b) Subdivisions (3)(d) and (3)(e) apply only to
21 operating rules that relate to one or more of the following
22 subjects:

23 (i) use of common property;

24 (ii) use of a home, including any aesthetic or
25 architectural standards that govern alteration of a
26 home;

1 (iii) homeowner discipline, including any
2 withdrawal of privileges or charges for violating
3 governing documents and any procedure for withdrawing
4 privileges or imposing charges;

5 (iv) any standard for delinquent assessment
6 installment or other payment plans;

7 (v) any procedure to resolve disputes;

8 (vi) any procedure for reviewing and approving or
9 disapproving a proposed physical change to a home or to
10 the common area; and

11 (vii) any procedure for elections.

12 (c) For the following actions by directors,
13 subdivisions (3) (d) and (3) (e) do not apply:

14 (i) a decision regarding maintenance of the common
15 property;

16 (ii) a decision on a specific matter that is not
17 intended to apply generally;

18 (iii) a decision setting the amount of a regular or
19 special assessment;

20 (iv) a rule change required by law, if directors
21 have no discretion as to the substantive effect of the
22 rule change; and

23 (v) issuance of a document that merely repeats
24 existing law or the governing documents.

25 (d) Directors shall provide written notice of a
26 proposed rule change to homeowners at least 30 days before

1 making the rule change. The notice shall include the text,
2 and a description of the purpose and effect of the proposed
3 rule change, except as provided by subdivision
4 (3) (d) (iii).

5 (i) A decision on a proposed rule change shall be
6 made at a meeting of the directors, after consideration
7 of any comments made by homeowners.

8 (ii) Not more than 15 days after making the rule
9 change, the directors shall deliver notice of the rule
10 change to every homeowner. If the rule change is an
11 emergency rule change made under subdivision
12 (3) (d) (iii), the notice shall include the text of the
13 rule change, a description of the purpose and effect of
14 the rule change, and the date that the rule change
15 expires.

16 (iii) If directors determine that an immediate
17 rule change is required to address an imminent threat
18 to public health or safety, or an imminent risk of
19 substantial economic loss to the association,
20 directors may make an emergency rule change; and no
21 prior notice is required. An emergency rule change is
22 effective for 120 days, unless the rule change provides
23 for a shorter effective period. A rule change made
24 under this subdivision (3) (d) (iii) may not be
25 readopted under this paragraph.

26 (e) Homeowners holding 5% of the voting power may call

1 a special meeting of the homeowners to reverse any rule
2 change.

3 (i) To call such special meeting homeowners must,
4 no more than 30 days after being notified of a rule
5 change, deliver a written request to the association's
6 president, secretary, or registered agent, after which
7 the directors shall give notice of the meeting to all
8 homeowners. Homeowners are deemed notified of a rule
9 change after receiving notice of the rule change or
10 enforcement of the resulting rule, whichever happens
11 first. Homeowner requests to copy or review
12 association member lists with addresses, e-mail, and
13 phone numbers for the purpose of seeking support to
14 reverse a rule change shall be honored as soon as
15 reasonably possible, in any event within 3 business
16 days. Homeowners shall be allowed to use common
17 property reasonably in seeking support to reverse a
18 rule change.

19 (ii) At such special meeting with a quorum present,
20 the rule change shall be reversed by majority vote of
21 homeowners represented and voting, unless a corporate
22 document or statute requires otherwise.

23 (iii) Unless otherwise provided by the corporate
24 documents, for this subdivision (3) (e), one vote may be
25 cast for each home.

26 (iv) Special meetings under this subdivision

1 (3) (e) shall follow laws generally applicable to
2 special meetings.

3 (v) A rule change reversed under this subdivision
4 (3) (e) may not be readopted for one year after the date
5 of the meeting reversing the rule change. Nothing in
6 this subdivision (3) (e) precludes directors from
7 adopting a different rule on the same subject as a rule
8 change that has been reversed.

9 (vi) As soon as possible and not more than 15 days
10 after the close of voting at a special meeting, the
11 directors shall provide every homeowner with notice of
12 the results of a vote held pursuant to this subdivision
13 (3) (e). This subdivision (3) (e) does not apply to
14 emergency rule changes under subdivision (3) (d) (iii).

15 (4) Required Notice for Homeowner Votes on Assessments.
16 Unless governing documents require a longer period, homeowner
17 votes to impose or increase regular or special assessments
18 require at least 30 days' advance notice.

19 Section 40. The Right to Individual Autonomy.

20 (1) Signs and Flags. Homeowners have the right to display
21 noncommercial signs, flags, religious objects, and "for sale"
22 signs on their property; however, the declaration may set
23 reasonable limits so long as, for 3 months before any election
24 or other vote held by an association, government, or other
25 entity with geographic territory overlapping any part of a

1 common-interest community, the association does not forbid
2 display of reasonable-size signs relating to the election or
3 vote.

4 (2) Neighbor Contacts. Homeowners have the right
5 peacefully to visit, telephone, petition, or otherwise contact
6 their neighbors; however, the declaration may set reasonable
7 restrictions if it permits some weekday afternoon and some
8 weekend hours for such neighbor contacts.

9 (3) Peaceful Assembly. Homeowners have the right to invite
10 guests to assemble peacefully on their property; however, the
11 declaration may set reasonable limits to protect nearby homes.

12 (4) Common Property. Where an association makes any part of
13 common property available for use by homeowners:

14 (a) the governing documents shall state any charge for
15 homeowners' use, which shall not exceed the association's
16 marginal cost for use, as well as any other restrictions on
17 such use, which shall be content-neutral and otherwise
18 reasonable; and

19 (b) the governing documents shall not unreasonably
20 restrict homeowners' rights to invite public officers or
21 candidates for public office to appear or speak in common
22 areas, or unreasonably restrict lawful uses relating to an
23 election or other vote held by the association or any
24 government or quasi-governmental entity with geographic
25 territory overlapping any part of the common-interest
26 community.

1 (5) Discrimination Prohibited. Restrictions on signs and
2 flags, neighbor contacts, peaceful assembly, common property,
3 or other self-expression shall not differ based on the content
4 of a view sought to be expressed by a homeowner. If an
5 association allows homeowners to express views on a topic, in a
6 newsletter or other forum, other homeowners equally shall be
7 allowed to respond with differing views.

8 (6) No Forced Membership in Another Organization. An
9 association may not force a homeowner to join a separate
10 organization unless (a) expressly authorized by the
11 declaration before the homeowner's purchase or (b)
12 associations merge in compliance with State law.

13 (7) No Mandatory Charitable or Political Funding.
14 Assessments or other mandatory dues from association members
15 may not be used by the association for charitable or political
16 purposes. Any solicitations for charitable or political
17 purposes by an association must be conducted separately from
18 the billing for customary assessments of fees, and clearly be
19 designated as voluntary.

20 (8) Ultimate Limit on Governing Documents. Governing
21 documents must be created in compliance with law, and not
22 include terms that are illegal or unconstitutional, or that
23 violate public policy. Terms that are invalid because they
24 violate public policy include, but are not limited to, terms:

25 (a) that are arbitrary, spiteful, or capricious;

26 (b) that unreasonably burden a fundamental

1 constitutional right;

2 (c) that impose an unreasonable restraint on
3 alienation;

4 (d) that impose an unreasonable restraint on trade or
5 competition; or

6 (e) that are unconscionable.

7 Section 45. The Right to Oversight of Associations and
8 Directors.

9 (1) Open Records. All association meeting minutes,
10 financial and budget materials, contracts, court filings, and
11 other records must be maintained for at least 4 years at the
12 association's main business office or other suitable location
13 near homes in the association.

14 (a) Except as provided in subdivision (1)(b), the
15 association must make all records available for homeowners
16 or their authorized agents to inspect and copy such
17 materials. Such copying shall be permitted during regular
18 working hours, within 10 days of a written request without
19 requiring a statement of purpose or reason and at a
20 reasonable cost.

21 (b) Documents protected by the attorney-client
22 privilege or as work product are exempt from disclosure to
23 the same extent as they would be in litigation, as are
24 contracts being negotiated. The following records also are
25 exempt from disclosure to homeowners or their agents,

1 except upon court order for good cause shown, provided that
2 such records shall be kept confidential except upon court
3 order for good cause shown:

4 (i) staff personnel records, except the
5 association shall make available under subdivision
6 (1) (a) records of time worked and salary and benefits
7 paid; and

8 (ii) records of homeowners other than the
9 requester, except the association shall make available
10 under subdivision (1) (a) the list of homeowners with
11 their mailing addresses and a compilation of
12 violations of the governing documents, other than for
13 nonpayment of an assessment, and this compilation
14 must:

15 (a) describe the violation alleged and the
16 sanction sought or imposed; and

17 (b) not identify the person against whom the
18 sanction was sought unless the matter was
19 considered in an open meeting or court.

20 (c) If an association refuses to allow a homeowner or a
21 homeowner's agent to review records as provided in this
22 Section, the requester is entitled to an immediate
23 injunction, a penalty of \$500, or in the court's
24 discretion, more, and attorney fees, even if the
25 association makes records available after the filing of an
26 action in the circuit court for the release of the records.

1 (d) Any director may inspect any association records,
2 except attorney-client privileged or work product records
3 concerning potential, ongoing, or past litigation against
4 the director. In addition to their rights under subdivision
5 (1) (a), directors may make copies of minutes of any meeting
6 during their term of office, and of any other document for
7 purposes reasonably related to their duties as directors.

8 (e) Pending litigation does not reduce the rights
9 provided in this Act.

10 (2) Quarterly Review. Every 90 days, or more frequently if
11 required by governing documents, the directors shall review at
12 one of the association meetings:

13 (a) the latest statements from financial institutions
14 that hold association accounts;

15 (b) current reconciliations of the association's
16 operating and reserve accounts;

17 (c) a year-to-date income and expense statement for
18 association operating accounts, compared with the budget;

19 (d) year-to-date revenues and expenses for the reserve
20 account, compared with the budget; and

21 (e) the status of any lawsuit, arbitration, or
22 mediation involving the association.

23 (3) Open Meetings. Except for executive sessions,
24 homeowners may attend, record, and (subject to reasonable
25 limits) speak at any meeting of the association or its
26 directors.

- 1 (a) Directors may meet in executive session only to:
- 2 (i) approve, modify, terminate, or take other
- 3 action regarding a contract between the association
- 4 and an attorney;
- 5 (ii) consult with counsel on litigation or
- 6 otherwise to obtain legal advice, if the discussion
- 7 would be protected by attorney-client privilege;
- 8 (iii) discuss the character, alleged misconduct,
- 9 professional competence, or physical or mental health
- 10 of an association manager or employee;
- 11 (iv) discuss a homeowner's failure to pay an
- 12 assessment or other alleged violation of governing
- 13 documents, except as provided in subdivision (3)(b);
- 14 or
- 15 (v) discuss ongoing contract negotiations.
- 16 (b) Directors shall use executive session to discuss
- 17 alleged violations of governing documents unless the
- 18 person who may be sanctioned requests an open meeting in
- 19 writing. The person who may be sanctioned may attend and
- 20 testify at any hearing concerning the alleged violation,
- 21 but has no right to attend director deliberations.
- 22 (c) Meeting minutes shall note generally any matter
- 23 discussed in executive session.
- 24 (4) Open Voting. All votes by directors shall be recorded
- 25 in the minutes available to all homeowners, except to the
- 26 extent permitted by subsection (3). Directors may not vote by

1 proxy or by secret ballot, except a secret ballot to elect
2 officers. This rule also applies to any committee or agent of
3 the association that makes final decisions to spend association
4 funds, or approve or disapprove architectural decisions.

5 (5) Special Meetings. In addition to any provisions for
6 special meetings in the governing documents, the directors
7 shall provide 5 days' notice and convene a special meeting of
8 the association to be held no less than 5 days and no more than
9 10 days after the chair, the secretary, or the association's
10 registered agent receives a petition stating one or more
11 purposes for such meeting and signed by homeowners holding 10%
12 of the voting power, unless other law or the corporate
13 documents state a different percentage. The petition may
14 specify a person to chair the special meeting. Each purpose
15 and, if specified in the petition, the chair of such special
16 meeting shall be stated in its notice.

17 Section 50. The Right to Vote and Run for Office.

18 (1) Voting Rights. No association may deny a homeowner's
19 right to vote on any issue that affects an assessment or other
20 provision of governing documents that apply to the membership
21 class of the homeowner.

22 (a) For a home with multiple owners, unless expressly
23 provided by the declaration: if only one owner seeks to
24 vote, that owner votes for the home; but if more than one
25 owner seeks to vote, votes must be allocated by agreement

1 of a majority of the home's owners or, absent agreement,
2 co-owners shall split votes in proportion to their
3 ownership interest. Agreement exists if any homeowner
4 votes without another homeowner protesting either before
5 the vote in writing or, at the vote, promptly to the person
6 presiding over the vote.

7 (b) No vote may be cast except by the homeowner or,
8 where permitted by law and the governing documents, by a
9 person holding a proxy. The following requirements apply to
10 a proxy:

11 (i) The proxy must be dated and designate a meeting
12 for which it applies.

13 (ii) The proxy may not be revocable without notice,
14 and may be revoked only by actual notice to the person
15 presiding over the meeting.

16 (iii) The proxy must designate each specific
17 agenda item to which it applies, except a homeowner may
18 execute a proxy without designating any item if used
19 solely to determine whether a quorum exists. For each
20 specific agenda item designated, the proxy must
21 specify a vote for or against the proposition or, in an
22 election, state a specific position regarding whom to
23 vote for. If a proxy does not state proper instructions
24 to vote on an item, the proxy must be treated as if the
25 homeowner were present but not voting on that item.

26 (iv) When a holder casts proxy votes, the holder

1 must disclose the number of proxies held, and the
2 proxies must be kept as part of the public record of
3 the meeting for the period provided by law.

4 (v) Association governing documents may provide
5 for homeowner proxy voting by absentee ballot, with the
6 ballot as specific as any other proxy, and with the
7 association's secretary to announce the number of such
8 ballots received for each vote at the meeting, and the
9 ballots kept as part of the public record of the
10 meeting.

11 (c) Votes allocated to homes owned by the association
12 may not be cast, by proxy or otherwise, for any purpose.

13 (2) Candidacy. No homeowner may be denied the right to run
14 for office.

15 (a) Unless a person is appointed by the developer, the
16 person may not serve as director or officer if the person
17 or any relative serves as manager for the association or,
18 if a master association, manager of any association that is
19 subject to the governing documents of the master
20 association.

21 (b) Each candidate named on a ballot for director must
22 make a good faith effort to disclose in writing, by actual
23 notice to all homeowners or as otherwise provided in the
24 corporate documents, any financial, business,
25 professional, or personal relationship or interest that
26 would appear to a reasonable person to result in a

1 potential conflict of interest if the candidate were
2 elected director.

3 (c) Notice of which positions will be on the ballot in
4 the next election and what the deadline for filing for such
5 positions is shall be submitted to each homeowner between
6 20 and 45 days before the filing deadline. An election
7 shall not be held until at least 30 but no more than 60
8 days after filing deadline.

9 (3) Voting Procedure. Unless State law sets different
10 requirements, and if not otherwise specified by corporate
11 documents, a quorum exists if homeowners with 25% of the voting
12 power attend or, where permitted, are present by proxy at a
13 meeting; provided, where only a specified class may vote on a
14 particular issue, a quorum to vote on that matter requires 25%
15 of the voting power of that class. At any meeting, election of
16 directors, recalls, and homeowner votes on assessments,
17 amendments to governing documents, operating rules, or other
18 matters shall be conducted by secret ballot (except as provided
19 with respect to proxies in subdivision (1)(b)), with all
20 ballots kept as part of the records of the election for the
21 period provided by law.

22 (4) Access to Forums. If any candidate for an election, or
23 homeowner advocating a point of view for purposes reasonably
24 related to a homeowner vote, is permitted to use a forum that
25 is paid for by the community (such as a newsletter, bulletin
26 board, or meeting area) to promote his or her candidacy for a

1 board election, then other candidates and homeowners shall also
2 be permitted equal access to the same forum under the same
3 conditions.

4 Section 55. The Right to Reasonable Associations and
5 Directors.

6 (1) Duties of Associations. In addition to compliance with
7 law and governing documents, an association, whether acting
8 through directors, officers, managers, or other agents, by
9 homeowner vote, or otherwise, has the following duties to its
10 homeowners:

11 (a) to use ordinary care and prudence in managing
12 property and financial affairs;

13 (b) to treat homeowners fairly; and

14 (c) to act reasonably in the exercise of discretionary
15 powers, including rule-making, enforcement, and
16 design-control powers.

17 (2) Duties of Directors, Officers, Managers, and Other
18 Agents. In addition to compliance with law and governing
19 documents, association directors, officers, managers, and
20 other agents must act in good faith, deal fairly with the
21 association and its homeowners, and use ordinary care and
22 prudence in performing their functions.

23 (a) A director, officer, attorney, manager, or other
24 agent of an association shall not solicit or accept any
25 form of compensation, gratuity, or other remuneration

1 that:

2 (i) would improperly influence or would appear to a
3 reasonable person to improperly influence the
4 decisions made by such agent; or

5 (ii) would result or would appear to a reasonable
6 person to result in a conflict of interest for such
7 agent.

8 (b) Unless appointed by the developer, a director or an
9 officer of an association shall not:

10 (i) enter into or renew a contract with the
11 association to provide goods or services to the
12 association; or

13 (ii) otherwise accept any commission, personal
14 profit, or compensation of any kind from the
15 association for providing goods or services to the
16 association.

17 (3) Protection Regarding Attorneys. In contracting for a
18 lawyer to seek foreclosure or take other enforcement action, no
19 association may make legal fees in whole or part contingent on
20 the amount paid (for fees or otherwise) by a homeowner. Any
21 homeowner payment to the lawyer shall be held for the
22 association. No contract may authorize anyone to prevent a
23 homeowner from seeking to resolve any dispute directly with
24 directors or other agents of an association.

25 (4) Protection Regarding Managers. All association
26 managers must be licensed and bonded where required by law. In

1 contracting with managers, an association may pay a flat fee,
2 hourly rates, or a combination of flat fees and hourly rates.
3 Managers may not be paid any fee, bonus, incentive, or other
4 amount based on the number or value of violations they allege
5 or address. Managers may not impose charges on homeowners,
6 except where reasonable and expressly authorized by governing
7 documents. All homeowner payments to the manager shall be held
8 for the association.

9 (5) Determination of Architectural Requests. A homeowner's
10 request that the association or related architectural body
11 approve the homeowner's planned construction, landscaping,
12 maintenance, or repairs shall be deemed approved unless, within
13 30 days or such other period as the declaration may specify,
14 the association or architectural body provides written notice
15 specifically detailing a lawful basis for disapproval in whole
16 or part. Such notice shall specify that homeowners have the
17 right to reconsideration by the directors, unless the directors
18 collectively made the original decision. Each year the
19 association in writing shall remind homeowners that rules
20 govern approval of construction, landscaping, maintenance, or
21 repairs.

22 (6) Retaliation Specifically Forbidden. No association,
23 director, officer, manager, or other agent of an association
24 may take, or direct, or encourage another person to attempt
25 retaliatory action against a homeowner because the homeowner
26 has:

1 (a) complained about alleged violations of law or
2 governing documents;

3 (b) requested to review books, records, or other papers
4 of the association; or

5 (c) taken any other lawful action asserting homeowner
6 rights or otherwise seeking to improve association
7 operations. The retaliatory forbidden action includes,
8 without limitation, ill-motivated litigation as well as
9 deprivation of other rights protected by law or governing
10 documents.

11 (7) Remedies. In addition to other remedies authorized by
12 this Act or other law, homeowners are entitled to recover
13 compensatory and, for intentional violations, punitive damages
14 from an association and its directors, officers, managers, or
15 other agents who act unlawfully. In addition, upon proof of
16 intentional violations by directors, officers, managers, or
17 other agents of the association, homeowners are entitled to
18 appropriate relief in equity including, without limitation,
19 removal of offenders from positions with the association, a bar
20 against their return to office for a specified time, and an
21 order requiring the offender to repay the association for
22 expenses including legal fees.